

Operating foundation; qualifying distributions; payments to corporate fiduciary. An otherwise qualifying trust whose sole activity is the operation of a cultural center makes distributions qualifying it as an operating foundation under section 4942(j)(3)(A) of the Code when it turns over substantially all of its adjusted net income each year to a separate corporation that, acting only in a fiduciary capacity on behalf of the trust, disburses such amount in a timely manner in the operation of the cultural center.

A private foundation that otherwise qualifies as an 'operating foundation' under section 4942(j)(3) of the Internal Revenue Code of 1954 has asked whether, under the circumstances described below, it makes qualifying distributions 'directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated,' as required by section 4942(j)(3)(A).

The foundation is a trust exempt from federal income tax under section 501(c)(3) of the Code. Its sole activity is the operation of a cultural center.

The governing instrument creating the trust provides for a corporate trustee to hold title to, and maintain custody of, the trust property, and for managing trustees with discretionary, decision-making powers to administer the trust. All managing trustees must be members of the corporate trustee's board of directors.

The managing trustees formed a separate corporation to act only in a fiduciary capacity on behalf of the trust in conducting the operations of the cultural center. An amount equal to 'substantially all' (as defined in section 53.4942(b)-1(c) of the Foundation Excise Tax Regulations) of the trust's adjusted net income as defined in section 4942(f) of the Code is turned over each year to the corporation and disbursed in a timely manner in the operation of the cultural center.

The corporation receives property from the trust only to the extent necessary to carry out its fiduciary duties and holds such property in a fiduciary capacity on behalf of the trust rather than as an absolute owner. It contracts for goods and services only in a fiduciary capacity on behalf of the trust. All literature, advertisements, and publications identify programs of the cultural center as those of the trust rather than those of the corporation.

Section 4942(j)(3) of the Code provides that the term 'operating foundation' means any organization which (in addition to certain other requirements not pertinent here) makes qualifying distributions directly for the active conduct of the activities constituting the purpose or function for which it is organized and

operated equal to substantially all of its adjusted net income as defined in section 4942(f).

Section 53.4942(b)-1(b)(1) of the regulations provides that qualifying distributions are not made by a foundation directly for the active conduct of activities constituting its charitable, educational, or other similar exempt purpose unless such qualifying distributions are used by the foundation itself, rather than by or through one or more grantee organizations which receive such qualifying distributions directly or indirectly from such foundation .

Because the corporation formed by the managing trustees acts only in a fiduciary capacity on behalf of the trust, it is not a grantee organization that receives qualifying distributions from the trust. Rather, it is a trustee of the trust. The corporation, in its capacity as trustee, makes qualifying distributions directly for the active conduct of activities constituting the purpose or function for which the trust is organized and operated as required by section 4942(j)(3)(A) of the Code. Accordingly, since it otherwise qualifies, the trust is an operating foundation under section 4942(j)(3).